

11/22/2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 16-0668

FILED

NOV 22 2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

O R D E R

BRYCE EVERETT PETERSON,

Petitioner,

v.

LEROY KIRKEGARD, Warden,
Montana State Prison,

Respondent.

Bryce Everett Peterson believes his incarceration is illegal in his instant petition for a writ of habeas corpus. He contends that the presiding Ravalli County District Court Judge was required to disqualify himself because, as Peterson alleges, the judge was a sexual partner of the victim, H.P., in Peterson's underlying criminal proceedings. As relief, Peterson seeks a hearing with this Court or his immediate release from prison.

In November 2008, the State of Montana sought indictment of Peterson for five felonies and a misdemeanor following an attack and kidnapping of his sometime girlfriend, H.P., and a standoff with law enforcement. The day before his jury trial, Peterson entered *Alford*¹ pleas to the charges of aggravated kidnapping, aggravated assault, assault with a weapon, intimidation, aggravated burglary, and a second offense of partner or family member assault. Peterson received a seventy-year prison sentence with twenty years suspended. Through counsel, he appealed, and later moved this Court for voluntary dismissal because his motion to withdraw his *Alford* pleas was pending in District Court. We granted the dismissal, without prejudice. After the District Court denied the motion to withdraw his pleas, he again appealed. *State v. Peterson*, No. DA 12-0079, 2013 MT 329, 372 Mont. 382,

¹ *North Carolina v. Alford*, 400 U. S. 25, 91 S. Ct. 160 (1970); see also § 46-12-212, MCA.

314 P.3d 227. We affirmed the court on the motion's denial, reversed the court on the issue of restitution, and remanded for determination of its amount. *Peterson*, ¶¶ 1, 42.

Peterson now alleges claims of judicial misconduct and conflicts of interest against the presiding judge. He adds that he "found out" in October 2016. He blithely states that "Judge Langton has failed to recuse himself in the past when impropriety could be called into question." Yet, Peterson provides no support of whether Peterson or his counsel ever requested the Judge's recusal. He submits two "Affidavits and Declerations [*sic*]" which state that the judge previously had purchased illegal drugs.

Peterson is not entitled to relief here. He has failed to carry his burden of persuasion to establish that his incarceration is illegal. Section 46-22-101(1), MCA; *In re Hart*, 178 Mont. 235, 249-50, 583 P.2d 411, 418-19 (1978). Similar accusations surfaced in the local media during the recent race for District Court Judge in Ravalli County.² Peterson is only repeating these stories.

We note that Peterson represents himself in a pending appeal of the denial of his petition for postconviction relief along with several post-judgment motions. *Peterson v. State*, Cause No. DA 15-0773.

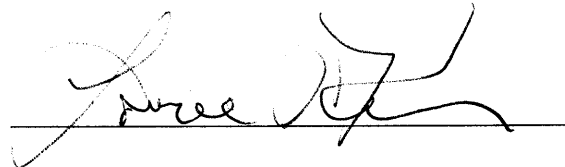
IT IS ORDERED that the petition for a writ of habeas corpus is DENIED and DISMISSED.

The Clerk is directed to provide a copy of this Order to counsel of record and to Bryce Everett Peterson personally.

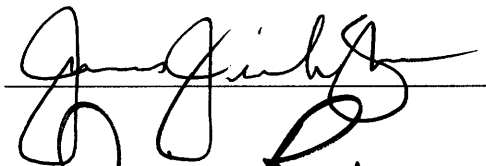
DATED this 22nd day of November, 2016.

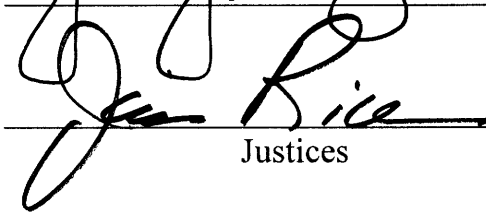


Chief Justice



² See, e.g., NBC Montana, KECI, KCFW, KTVM, *Langton Wins Despite Myers' Negative Ads*, www.nbcmontana.com/news/news/politics/local-elections/langton-wins-despite-myers-negative-ads (Last visited Nov. 16, 2016).





Justices